

## Article - Public Safety

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§3–701.

(a) (1) In this section the following words have the meanings indicated.

(2) “Chief” means the head of a law enforcement agency.

(3) (i) “Covert investigation” means an infiltration of or attempt to infiltrate a group or organization in a manner that conceals the identity of the law enforcement agency or the identity of an officer or agent of the law enforcement agency.

(ii) “Covert investigation” does not include the use of plainclothes officers or employees for crowd control and public safety purposes at public events.

(4) “Department” means the Department of State Police.

(5) “First Amendment activities” means:

(i) activities involving constitutionally protected speech or association; or

(ii) conduct related to freedom of speech, free exercise of religion, freedom of the press, the right to assemble, or the right to petition the government.

(6) “Law enforcement agency” means a police or sheriff’s department of the State, a county, a municipal corporation, or a public or private institution of higher education.

(7) “Legitimate law enforcement objective” means the detection, investigation, deterrence, or prevention of crime, or the apprehension and prosecution of a suspected criminal.

(b) (1) This section establishes the responsibilities of a law enforcement agency relating to investigations affecting First Amendment activities and the rights of persons, groups, and organizations engaged in First Amendment activities.

(2) This section does not apply to investigations that do not involve First Amendment activities.

(c) (1) A law enforcement agency may not conduct a covert investigation of a person, a group, or an organization engaged in First Amendment activities unless the chief or the chief's designee makes a written finding in advance or as soon as is practicable afterwards that the covert investigation is justified because:

(i) it is based on a reasonable, articulable suspicion that the person, group, or organization is planning or engaged in criminal activity; and

(ii) a less intrusive method of investigation is not likely to yield satisfactory results.

(2) Membership or participation in a group or organization engaged in First Amendment activities does not alone establish reasonable, articulable suspicion of criminal activity.

(d) A law enforcement agency shall:

(1) conduct all investigations involving First Amendment activities for a legitimate law enforcement objective; and

(2) in the process of conducting an investigation, safeguard the constitutional rights and liberties of all persons.

(e) A law enforcement agency may not investigate, prosecute, disrupt, interfere with, harass, or discriminate against a person engaged in a First Amendment activity for the purpose of punishing, retaliating, preventing, or hindering the person from exercising constitutional rights.

(f) An investigation involving First Amendment activities shall be terminated when logical leads have been exhausted or no legitimate law enforcement objective justifies the continuance of the investigation.

(g) A law enforcement agency may not collect or maintain information solely about the political beliefs, ideologies, and associations of a person, group, or organization if:

(1) the information is not relevant to a criminal investigation; or

(2) the law enforcement agency does not have a reasonable articulable suspicion that the person, group, or organization advocates, supports, or encourages the violation of any federal, State, or local criminal law that prohibits acts of terrorism, racketeering activity, as defined in 18 U.S.C. § 1961, violence, extortion, destruction of property, intimidation, harassment, obstruction of justice, or fraud.

(h) Information maintained in a criminal intelligence file shall be evaluated for the reliability of the source of the information and the validity and accuracy of the information.

(i) (1) A law enforcement agency shall classify accurately intelligence information in its databases to reflect properly the purpose for which the information is collected.

(2) When a law enforcement agency lists in a database a specific crime for which a person, a group, or an organization is under suspicion, the law enforcement agency shall ensure that the classification is accurate based on the information available to the law enforcement agency at the time.

(j) (1) Information gathered and maintained by a law enforcement agency for intelligence purposes may be disseminated only to appropriate persons for legitimate law enforcement objectives in accordance with the law governing the release of police records and with procedures established by the law enforcement agency.

(2) This subsection may not be interpreted to diminish the rights of a person requesting information under the Maryland Public Information Act.

(k) A law enforcement agency knowingly may not include in any criminal intelligence file information that has been obtained in violation of this section.

(l) On or before January 1, 2010, the Department shall adopt regulations governing:

(1) the conduct by the Department of covert investigations of persons, groups, or organizations engaged in First Amendment activities; and

(2) each departmental collection, dissemination, retention, database inclusion, purging, and auditing of intelligence information relating to persons, groups, or organizations engaged in First Amendment activities.

(m) On or before January 1, 2010, each law enforcement agency other than the Department shall adopt a written, publicly available policy governing:

(1) the conduct by the agency of covert investigations of persons, groups, or organizations engaged in First Amendment activities; and

(2) each agency collection, dissemination, retention, database inclusion, purging, and auditing of intelligence information relating to persons, groups, or organizations engaged in First Amendment activities.

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